General Terms of Use (Cloud)

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THESE GENERAL TERMS OF USE ("Terms") are an agreement by and between you (the "User") and Onyx Point, Inc. ("Onyx Point"), a Maryland corporation. These Terms apply to all cloud-based applications (including containers, VMs, stacks, automation tools, and all cloud-hosted software) provided by or licensed by Onyx Point except to the extent the Terms conflict with a separate written Agreement between you and Onyx Point.

By using any application, product or service (collectively, the "Services") displaying these Terms (including by web link of other reference), or by accepting these Terms during the acquisition, provisioning, or other initiation of the Services, you are entering into a binding agreement with Onyx Point that governs your rights and responsibilities with regard to the Services. If you are entering into this agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these Terms.

DEFINITIONS

"Agreement" means a master agreement, contract, subcontract, purchase order, transaction or license that incorporates these Terms either explicitly or by reference. An Agreement may be in physical or electronic form. In the absence of such an incorporating Agreement, these Terms shall themselves comprise the entire Agreement.

"Herein" means within the aggregate of these Terms and the incorporating Agreement (if any) that references and incorporates these Terms.

"Materials" means any information and materials provided by or made available by Onyx Point to User hereunder, including (but not limited to) documentation, training materials, web sites, media and presentations.

"Paid Services" means Services provided under an Agreement which entitles Onyx Point to receive a fee ("Usage Fee") from, or on behalf of, the User. Some examples of Usage Fees include: (i) fees paid to Onyx Point through a cloud provider's marketplace specifically for the Services; and (ii) license fees paid to Onyx Point which entitle the User to make use of the Services. However, if any such Usage Fees become delinquent under the terms of the Agreement, Onyx Point reserves the right to treat the Services as Unpaid Services with regard to Onyx Point's obligations hereunder.

"Unpaid Services" means Services for which Onyx Point is not entitled to receive a Usage Fee from the User. Note that the use of some Services may result in fees that are due to third parties (such as to your cloud provider or to providers of other applications or services within your stack), or that are due to Onyx Point under an agreement other than this Agreement, but that such fees are not Usage Fees and do not cause the Services to become Paid Services.

"Usage Term" means the period of time during which User is authorized to use the Services. This period shall be defined by the Agreement or be specified at the time of purchase (if applicable). If no Usage Term is so defined, or in any event where the Services are Unpaid Services or the required fee for Paid Services is not paid, Onyx Point reserves the right to terminate the Usage Term at any time without warning and with no further obligation to the User.

"User" means the party that will make use of the Services covered by these Terms. If User is a legal entity (other than an individual acting solely on their own behalf), "User" shall include any subsidiaries,

parent entities or other entities of common control when interpreting the restrictions imposed upon the User Herein.

USAGE RIGHTS

During the Usage Term, and subject to the terms and conditions set forth Herein, including timely payment of all applicable fees, if any: (i) User may use the Services on a non-exclusive and non-transferable basis for User's own internal business purposes or for purposes otherwise described in the incorporating Agreement; and (ii) User may use the Materials on a non-exclusive and non-transferable basis solely for the purposes of enabling or enhancing User's authorized use of the Services.

All rights to the Services and Materials not expressly granted to User are reserved by Onyx Point.

USAGE RESTRICTIONS

User shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise make available to any third party the Services or Materials in any way; (ii) modify or make derivative works based upon the Services or the Materials; (iii) duplicate, relocate or "mirror" the Services or Materials on any other server or device; (iv) use or access the Services or Materials through external interfaces, services or other tools to avoid fees or circumvent policies or restrictions that would otherwise be enforceable; (v) reverse engineer, disassemble, decompile, or otherwise analyze the technological makeup of the Services or Materials.

User shall not use the Services or cause or permit the Services to be used to: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) process, transmit or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iii) process, transmit or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Services or the data contained therein; (v) intentionally interfere with or disrupt the lawful activities of any third party; or (vi) attempt to gain unauthorized access to the Services or its related systems or networks, or the systems or networks of any third party.

ADDITIONAL USERS

The User assumes responsibility for usage of the Services by other users ("Additional Users") who: (i) are authorized by the User (including implicit authorization) to use the Services; or (ii) are using the Services while under the control or direction of the User. Such Additional Users shall abide by those terms of this Agreement which, by their nature, should reasonably apply to such users. The existence of, or quantity of, Additional Users shall not serve to increase Onyx Point's responsibilities or obligations under this Agreement.

GOVERNANCE AND DISPUTE RESOLUTION

This Agreement shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Maryland, without reference to the principles of conflict of laws. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

(The following paragraph applies to Paid Services only.)

If a dispute, controversy, claim or difference arises with respect to this Agreement, or any breach

thereof, that cannot be settled through correspondence or mutual consultation of the parties hereto, either party may refer the matter to a sole arbitrator selected jointly by the parties or, in the absence of such selection, to arbitration by the American Arbitration Association ("AAA"). The arbitration shall be governed by the United States Arbitration Act and any court having jurisdiction may enter judgment on the award. The arbitration, including arguments and briefs, shall be in the English language and conducted in Baltimore, Maryland, United States of America unless the parties mutually agree to some other location. The arbitrator shall not limit, expand or modify the terms of this Agreement. Each party shall bear its own expenses and an equal share of the compensation of the arbitrator and the fees charged by AAA. The parties, their representatives, any other participants, and the arbitrator shall hold the existence, content and result of arbitration in confidence. This clause will not limit or restrict either party's right to seek from a court of competent jurisdiction equitable relief for interim protection pending arbitration.

(The following paragraph applies to both Paid and Unpaid Services.)

The rights, obligations and limitations established in this GOVERNANCE AND DISPUTE RESOLUTION section shall survive termination of this Agreement.

INVOICING AND PAYMENT TERMS

(The following paragraph applies to Paid Services only.)

User shall make payments to Onyx Point according to the schedule provided in the Agreement. In the absence of such a schedule, User shall make payments according to the following default schedule:

- For Usage Fees payable through a third party marketplace: Payments are due as determined by the third party marketplace.
- For Usage Fees payable directly to Onyx Point: Payments are due at the beginning of the Usage Term.

Late Payments. All past due amounts, after a grace period of ten (10) days, will incur interest at a rate equal to the lower of 1.5% per month (18% per annum) or the highest rate permitted by law. Onyx Point reserves the right to terminate or withhold Services until payments are current.

Delinquent Payments. In the event that User's payment becomes delinquent (more than 60 days past due), User shall be responsible for all reasonable fees incurred by Onyx Point in an attempt to induce or collect payment.

Currency. Unless otherwise stated, all prices and all payments made under this Agreement are quoted and shall be made in United States Dollars (USD). When making payments, User shall be solely responsible for any wire transfer fees, currency conversion charges or other similar fees or charges.

LIMITATION OF LIABILITY

ONYX POINT WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OF THE SERVICES (HOWEVER ARISING, INCLUDING NEGLIGENCE), INCLUDING, BY WAY OF EXAMPLE, LOST REVENUE, LOST PROFITS, BUSINESS INTERRUPTION AND INJURY TO REPUTATION, EVEN IF ONYX POINT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF ONYX POINT RELATING TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER BY CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE TOTAL USAGE FEES PAID BY USER, UNDER THIS AGREEMENT, TO ONYX POINT DURING THE THREE (3) MONTH

PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO SUCH LIABILITY. IN THE CASE OF UNPAID SERVICES, SUCH LIABILITY OF ONYX POINT SHALL BE ZERO.

The rights, obligations and limitations established in this LIMITATION OF LIABILITY section shall survive termination of this Agreement.

ORDER OF PRECEDENCE

If there are any inconsistencies or conflicts in the provisions applicable to any matter between the Parties, precedence shall be given in the following descending order: (i) the terms of the incorporating Agreement under which the matter has occurred; (ii) when a separate support subscription has been purchased which covers the Services, the terms of the applicable support subscription; (iii) these General Terms of Use.

The order of precedence provision, if any, in an incorporating Agreement shall prevail over this section.

OWNERSHIP

The User's rights to use the Services under this Agreement are non-perpetual, and nothing Herein shall be construed to convey ownership to User, or obligate conveyance of ownership to the User, any property rights, including intellectual property rights, without limitation, all copyrights, trademarks, service marks, trade secrets, patents, moral rights, distribution rights, rights to create derivative works, or other legal rights protecting tangible or intangible property or proprietary information ("Property"). The preceding sentence shall apply to Property of Onyx Point and to any component of the Services that is owned by a third party.

User Comments and Feedback: In the course of using the Services, User (including Additional Users) may provide comments, suggestions, and other feedback ("Feedback") regarding the Services (including, without limitation, the marketing, support, performance, and features of the Services) or related topics to Onyx Point. All such Feedback shall become the property of Onyx Point, and Onyx Point will be free to use it for any purpose, including, without limitation, implementing changes to the Services (and any component thereof) or any other product or service (including Open Source Software) based on the Feedback without attribution or compensation to you.

Third Party Acknowledgement: User acknowledges and is hereby informed that the Services may be dependent upon (including for essential functionality) components subject to third party licenses or rights (such as, without limitation, intellectual property rights, copyrights, patents, trademarks, etc.). As between User and Onyx Point, nothing in this Agreement is intended to grant, claim, or otherwise affect any rights, obligations, or limitations granted or reserved by any such third-party license or right. Unless otherwise stated in this Agreement, or an accompanying support subscription, third-party components are incorporated "as is" and without warranty.

Open Source Acknowledgement: User acknowledges and is hereby informed that the Services may be dependent upon (including for essential functionality) components subject to open source licenses. As between User and Onyx Point, nothing in this Agreement is intended to grant, claim, or otherwise affect any rights, obligations, or limitations granted or reserved by any such open source license. Unless otherwise stated in this Agreement, or an accompanying support subscription, open source components are incorporated "as is" and without warranty.

Open Source Contributions: In the process of providing the Services, Onyx Point occasionally finds bugs in, or issues to address with, Open Source Software. When commercially practical, Onyx Point

will make best efforts to work with open source communities to resolve bugs or issues, and to contribute resulting changes back to the open source product, where they will be subject to the corresponding open source license. Due to the nature of open source development, Onyx Point cannot guarantee that the open source communities will accept such contributions.

The rights, obligations and limitations established in this OWNERSHIP section shall survive termination of this Agreement.

PRIVACY

Onyx Point's privacy policies may be viewed at *www.onyxpoint.com/legal*. Onyx Point reserves the right to modify its privacy policies at its reasonable discretion from time to time. Note that the Services may be dependent upon other products and services which are not provided by Onyx Point and are outside of Onyx Point's control, and that such products and services may have their own privacy policies and other policies to which Onyx Point is not a party.

RELATIONSHIP OF THE PARTIES

This agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between you and Onyx Point. There are no third-party beneficiaries to this Agreement.

TAXES

Unless otherwise stated in the Agreement or at the time of purchase, all prices are exclusive of any transactional taxes, including sales and use, value-added, goods and services, or any other taxes, fees, levies or duties ("Taxes") levied in regard to any of the transactions covered by these Terms.

Onyx Point will not calculate or collect Taxes for jurisdictions where it does not have nexus. Such Taxes shall remain the sole responsibility of User as determined by User's taxing authorities.

TERM AND TERMINATION

This Agreement shall commence on the "Effective Date" specified Herein. If no Effective Date is specified, then the Effective Date shall be the first of: (i) the date upon which the User accepted of this Agreement (including by acknowledging these Terms online); or (ii) the date the User first acquired, provisioned, or otherwise initiated the Services.

This Agreement shall remain in effect until the "Termination Date" specified Herein. If no Termination Date is specified, the Termination Date shall be the latter of: (i) the last day of the Usage Term; or (ii) the last day the User used the Services. However, no unauthorized use of the Services shall result in or extend the duration of any rights for the User or any responsibilities or liabilities for Onyx Point under this Agreement.

(The following paragraph applies to Unpaid Services only.)

Onyx Point may terminate this Agreement under the following circumstances:

- For the convenience of Onyx Point, at any time, at its sole discretion, without notice, and with no further obligation owed to the User.

(The following paragraph applies to Paid Services only.)

Onyx Point may terminate this Agreement under the following circumstances:

- Material breach by the User, upon seven (7) days written notice. However, the notice period shall be waived if the terminating party demonstrates that immediate termination is necessary and reasonable due to safety or security risks, or to prevent damage to equipment, facilities, or the business reputation of the terminating party.
- Non-Material breach by the User, upon seven (7) days written notice. However, such notice shall not be valid unless the terminating party has previously informed the breaching party of the breach, and has allowed for a thirty (30) day period during which the breaching party failed to correct or remedy the breach.
- Failure by the User to make payments such that payments are more than sixty (60) days past due.

(The following paragraph applies to both Paid and Unpaid Services.)

Upon termination, all rights, obligations and limitations hereunder shall cease except (i) the obligation of User to pay for all Services previously provided (including for any unused Usage Term in the case of a breach or failure to pay by User; (ii) the rights, obligations, limitations, disclaimers and warranties expressed under the headings of CONFIDENTIALITY, GOVERNANCE AND DISPUTE RESOLUTION, INDEMNIFICATION, LIMITATION OF LIABILITY, NON-SOLICITATION, OWNERSHIP, and WARRANTIES; and (iii) any other right, obligation or limitation whose expiration or perpetuity is otherwise specified herein.

WARRANTIES

(The following paragraph applies to Unpaid Services only.)

THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. NO USE OF THE SERVICES IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER. THE SERVICES AND ALL RELATED COMPONENTS ARE PROVIDED **"AS IS"**, WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. IN NO EVENT SHALL ONYX POINT, OR ANY OTHER ENTITY INVOLVED IN PROVIDING OR DELIVERING THE SERVICES, BE LIABLE FOR ANY CLAIM, OR ANY SPECIAL INDIRECT OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA, OR PROFITS, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SERVICES. NO ASSURANCES ARE PROVIDED THAT THE SOFTWARE DOES NOT INFRINGE THE PATENT OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY OTHER ENTITY. ONYX POINT DISCLAIMS ANY LIABILITY TO THE USER FOR CLAIMS BROUGHT BY ANY OTHER ENTITY BASED ON INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OR OTHERWISE. AS A CONDITION OF EXERCISING THE RIGHTS GRANTED HEREUNDER, USER HEREBY ASSUMES SOLE RESPONSIBILITY TO SECURE ANY OTHER INTELLECTUAL PROPERTY RIGHTS NEEDED, IF ANY.

(The following paragraph applies to Paid Services only.)

Subject to the limitations expressed in this WARRANTIES section and in the LIMITATION OF LIABILITY section, Onyx Point warrants to User, during the Usage Term, that all Services provided Hereunder: (i) will be provided in accordance with current, sound and generally accepted industry standards and practices for commercial software; and (ii) will conform to the additional specifications, if any, explicitly contained in an incorporating Agreement. In the event that one of more Services fail to meet this

standard, Onyx Point agrees to take commercially reasonable steps to correct such failure. THE FOREGOING WARRANTY IS NOT INTENDED TO ESTABLISH OR MEET THE COMMERCIAL STANDARD OF A SOFTWARE OR SERVICES SUPPORT AGREEMENT, NOR TO ENTITLE USER TO RECEIVE INDIVIDUALIZED ASSISTANCE FROM ONYX POINT; however User may be eligible to purchase a separate support subscription and/or technical assistance from Onyx Point.

(The following paragraph applies to both Paid and Unpaid Services.)

User acknowledges that the Services, by their nature, are dependent upon and may incorporate the products, services and technologies of third parties (including Open Source) over which Onyx Point has either no direct control or incomplete control, and that Onyx Point offers no warranty for, and assumes no liability for damage or losses of any kind that might arise in connection with, those products, services or technologies, or with the associated third parties.

Except for the express warranties stated in this Agreement, Onyx Point disclaims all warranties and representations, express or implied, oral or written, including any warranties of merchantability and fitness for a particular purpose. NO WARRANTY IS MADE REGARDING THE ABILITY OF THE SERVICES, INCLUDING ANY UNDERLYING OR RELATED PRODUCTS, SERVICES, TECHNOLOGIES, OR SYSTEMS (COLLECTIVELY, "RELATED SYSTEMS") TO PREVENT OR ELIMINATE SPECIFIC SECURITY BREACHES, COMPLIANCE FAILURES, TECHNOLOGY FAILURES, DATA LOSS, OR ANY OTHER RISK. THE SERVICES (AND ANY RELATED SYSTEMS) MAY NOT BE FAULT-TOLERANT AND ARE NOT INTENDED FOR USE IN MISSION-CRITICAL SYSTEMS, SUCH AS THOSE USED IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL SYSTEMS, LIFE SUPPORT MACHINES, WEAPONS OR DEFENSIVE SYSTEMS, OR ANY OTHER USE IN WHICH THE FAILURE OF THE SERVICES (OR RELATED SYSTEMS) COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, FINANCIAL, OR ENVIRONMENTAL DAMAGE ("HIGH RISK ACTIVITIES"). ONYX POINT SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

The rights, obligations and limitations established in this WARRANTIES section shall survive termination of this Agreement.

MISCELLANEOUS

Assignment. This Agreement may not be assigned by the User without the express written consent of Onyx Point. This Agreement may be assigned by Onyx Point without User's consent, including, without limitation, as a result of a merger or sale of all or substantially all of the assets or stock of Onyx Point, or to a parent, subsidiary or affiliate as part of any internal reorganization. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns. Any assignment in violation of this paragraph will be null and void.

Authority to Enter Agreement. Each party warrants that it is authorized to enter into this Agreement, and to carry out its obligations hereunder.

Entire Agreement. This Agreement, including any and all exhibits and attachments which are incorporated herein by reference, constitutes the entire agreement and understanding between the parties hereto, and supersedes and replaces any and all contemporaneous understandings, commitments, agreements, proposals or representations of any kind, whether oral or written, relating to the subject matter hereof.

Export Compliance. Each party agrees to comply with all relevant export laws and regulations of the United States.

Force Majeure. Each party's failure or delay to perform its obligations, except for its payment obligations, under this Agreement shall be excused to the extent and for the period such performance is prevented by any act or condition beyond the reasonable control of such party, including, without limitation, acts of God, acts of a public enemy, terrorism, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), acts of any governmental body, failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, or inability to obtain labor, materials, power, equipment, transportation, or third party services such as network or cloud infrastructure (collectively referred to herein as "Force Majeure"). Each party shall use its reasonable efforts to minimize the duration and consequences of any failure of or delay in performance resulting from a Force Majeure event and to promptly notify the other of any actual or potential Force Majeure event.

Modifications. Onyx Point reserves the right to modify these Terms from time to time and at its sole discretion. For Unpaid Services, changes to these Terms shall be effective immediately. For Paid Services, material changes shall not be made effective during the Usage Term without written acceptance by the User.

No Conflicts. Each party warrants that nothing in this Agreement, nor in the execution of their duties or performance hereof, contravenes or is in conflict with any law, judgment, decree, order, or regulation of any governmental authority, or with any obligations owed to any other entity to which the Parties are subject.

No Third-Party Rights. No term of this Agreement is enforceable by any entity who is not party to it, except, in the case of the government User, where such enforceability is required by law.

No Waiver. The failure of either party to insist upon performance of any provision of this Agreement, or to exercise any right, remedy or option provided herein, shall not be construed or deemed as a waiver of the right to assert any of the same at any time thereafter.

Section Headings. The section headings, subsection headings, paragraph headings, and captions used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.

Severability. If a court or regulatory body finds any term, condition or provision of this Agreement to be invalid or unenforceable: (i) the remaining terms, conditions and provisions of this Agreement shall remain in full force and effect; and (ii) such invalid or unenforceable term, condition or provision shall be modified so as to be enforceable without materially altering its intent, or if such modification is not possible, such term, condition or provision shall be removed.

End of General Terms of Use (Cloud)